

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ARTEMIA LOPEZ</b>	)	
Claimant	)	
VS.	)	
	)	
<b>EXCEL CORPORATION</b>	)	Docket No. 259,860
Respondent,	)	
Self-Insured	)	

**ORDER**

The claimant, Artemia Lopez, appealed the June 10, 2002 Decision entered by Administrative Law Judge Pamela J. Fuller. The Board heard oral argument on December 11, 2002.

**APPEARANCES**

Stanley R. Ausemus of Emporia, Kansas, appeared for Ms. Lopez. D. Shane Bangerter of Dodge City, Kansas, appeared for the employer, Excel Corporation (Excel).

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Decision. In addition, the November 6, 2001 medical report from Dr. Theodore L. Sandow, Jr., is also part of the record. At oral argument before the Board, the parties agreed that Dr. Sandow's functional impairment opinion from the November 6, 2001 report could be considered despite the fact that the doctor did not specifically state the rating was formulated pursuant to the appropriate edition of the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides). Nonetheless, due to that omission, Ms. Lopez argues Dr. Sandow's functional impairment opinion should be given little weight.

**ISSUES**

This is a claim for a series of micro-traumas and repetitive injury while working for Excel through June 7, 2000. Ms. Lopez requests workers compensation benefits for injuries to her back, shoulders, and both arms and hands.

In the June 10, 2002 Decision, Judge Fuller awarded Ms. Lopez a four percent permanent partial general disability, which was based upon the functional impairment ratings provided by Dr. Theodore L. Sandow, Jr., and Dr. J. Raymundo Villanueva.

Ms. Lopez contends Judge Fuller erred. Ms. Lopez requests the Board to increase the permanent partial general disability to 20 percent, which is the whole body functional impairment rating provided by her medical expert witness, Dr. Pedro Murati. Ms. Lopez argues Dr. Murati provided the most thorough examination and that his functional impairment rating is the most accurate.

Conversely, Excel contends claimant has no impairment or else the Decision should be affirmed. Excel argues that neither Dr. Villanueva, who was Ms. Lopez's treating physician, nor Dr. Sandow, whom the Judge selected to provide an independent medical evaluation, could identify any objective findings. Accordingly, Excel argues Dr. Villanueva's and Dr. Sandow's opinions that Ms. Lopez sustained only a four percent whole body functional impairment are more accurate than Dr. Murati's rating.

Ms. Lopez does not request a work disability (a permanent partial general disability greater than the functional impairment rating). Consequently, the only issue before the Board on this appeal is the amount of Ms. Lopez's whole body functional impairment rating.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

The parties agreed that Ms. Lopez sustained a series of mini-traumas while working for Excel through June 7, 2000. Ms. Lopez alleges she sustained permanent injury to her hands, arms, shoulders and back.

After Ms. Lopez reported her injury to Excel, the company began providing her with medical treatment from the company physician, Dr. Villanueva. Ms. Lopez first saw Dr. Villanueva on July 5, 2000, complaining of pain in her shoulders, elbows, wrists and low back.

Dr. Villanueva initially prescribed anti-inflammatory and pain medications and later ordered nerve conduction tests. Those tests, which were administered in August 2000, indicated that Ms. Lopez was possibly beginning to experience right carpal tunnel syndrome. During the course of treatment, the doctor also prescribed Amitriptyline, muscle relaxers, physical therapy and gave Ms. Lopez work restrictions. But despite Dr. Villanueva's medical treatment, Ms. Lopez's symptoms did not resolve.

Dr. Villanueva ordered a CT scan. That scan, which was done in September 2000, indicated Ms. Lopez had an inconsequential, minimal bulge in her L5-S1 intervertebral disc. In short, the CT scan was essentially normal.

Dr. Villanueva referred Ms. Lopez to a Dr. Shah for a second opinion. Dr. Shah agreed with Dr. Villanueva that Ms. Lopez was not a surgical candidate. In October 2000, Dr. Villanueva placed permanent work restrictions on Ms. Lopez:

Not to do push, pull, lift, carry more than 20 pounds occasionally, 15 pounds frequent, 10 pounds constant; not to do activities above the shoulder level, right and left; not to reach beyond 18 inches from the body; not to do repetitive bending, stooping or rotation of the trunk; not to do repetitive flexion and extension of the right wrist; not to do heavy gripping with the right hand, 15 pounds maximum occasional, 11 pounds frequent, and 8 pounds constant.<sup>1</sup>

In November 2000, Dr. Villanueva rated Ms. Lopez's functional impairment and determined she had a two percent whole person impairment due to low back pain, a one percent upper extremity impairment due to the right shoulder injury, and a one percent impairment for the left shoulder, which comprised a four percent whole body functional impairment.

Dr. Villanueva's opinions were based entirely on Ms. Lopez's subjective complaints as he was unable to make any objective findings. The doctor testified, in part:

Q. (Mr. Bangerter) Is that opinion [of the functional impairment rating], Doctor, within a reasonable degree of medical certainty?

A. (Dr. Villanueva) Yes.

Q. Is it also pursuant to the AMA Guides Fourth Edition?

A. In this regard, we don't have specifics in the Guides for these subjective findings, so I gave the benefit of the doubt to the patient because of her complaints, and I used just my criteria to give her that rating.

Q. So if you were to follow the AMA Guides Fourth Edition specifically, would she have any impairment at all?

A. Perhaps not.

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<sup>1</sup> Villanueva Depo. at 11.

Q. And so you are really giving her the benefit of the doubt in regards to the functional impairment that you've assigned to her?

A. Yes.<sup>2</sup>

In March 2001, Ms. Lopez returned to Dr. Villanueva, complaining of pain in her low back, hands and shoulders. The doctor injected the upper trapezius muscle in both shoulders. But those injections provided minimal relief. When the doctor last saw Ms. Lopez in April 2001, her symptoms were essentially the same as in November 2000 when he rated her.

Ms. Lopez's attorney hired Dr. Pedro Murati to provide medical opinions in this claim. Dr. Murati saw Ms. Lopez in December 2000 and again in July 2001. The doctor diagnosed Ms. Lopez as having myofascial pain syndrome affecting the neck and both shoulder girdles, bilateral rotator cuff strain with mild bilateral acromioclavicular joint crepitus, and lumbosacral strain. Using the *AMA Guides* (4th ed.), the doctor rated the injury to Ms. Lopez's neck, back and shoulders as comprising a 20 percent whole body functional impairment. Moreover, Dr. Murati found objective findings of injury such as trigger points in both shoulder girdles and muscle spasms in the low back.

Finally, Dr. Theodore L. Sandow, Jr., examined Ms. Lopez at Judge Fuller's request. Dr. Sandow examined Ms. Lopez in November 2001. The doctor did not testify, but his findings and conclusions are set forth in a November 6, 2001 letter to the Judge.

In short, Dr. Sandow made no objective findings. But Dr. Sandow also rated Ms. Lopez as having a four percent whole body functional impairment for permanent injuries to her hands, wrists and shoulders. In his November 6, 2001 letter to the Judge, the doctor wrote, in part:

The patient has extensive subjective complaints with no objective findings. The patient has no evidence or complaints of radiculopathy in the lower extremities and no real complaints of radiculopathy in the upper extremities. As far as the lumbar spine complaints the patient would fit in the DRE impairment category I of complaints and symptoms, but without findings as being a 0% impairment of the whole person. In the upper extremities, there is no evidence of ankylosis or loss of range of motion, only pain with movement. The results of her steroid injections into her shoulders provided no substantial relief with only one day of loss of pain. This finding would suggest that shoulder impingement is not present as the patient did not even receive temporary improvement. There is also no true evidence of tears

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<sup>2</sup> Villanueva Depo. at 12-13.

of the rotator cuffs. The possibility of impending carpal tunnel syndrome does exist, but again there is no evidence to validate this.

Because of the persistent symptoms in the upper extremities involving both the shoulders and the wrist and hands, I would rate the patient as having a 4% permanent partial impairment and loss of physical function of both upper extremities which would be equivalent to a 4\$ [sic] permanent partial impairment and loss of physical function to the whole person.

As indicated above, Dr. Sandow's report does not indicate whether or not the rating he provided was derived by using the *AMA Guides*, although the doctor mentions the DRE (diagnosis-related estimates) category I, which is a term utilized in the *AMA Guides*. Accordingly, as indicated above, Ms. Lopez argues that Dr. Sandow's functional impairment rating should be given little weight.

Based upon the above medical evidence, Judge Fuller determined Ms. Lopez's work-related injuries comprised a four percent whole body functional impairment. The Board agrees with that conclusion. Judge Fuller appointed Dr. Sandow to provide an unbiased opinion of Ms. Lopez's functional impairment. There is nothing in Dr. Sandow's report to hint that his opinions were influenced by an allegiance to either party.

The Board is persuaded that Ms. Lopez generally lacks objective findings of her injuries and Dr. Villanueva's and Dr. Sandow's four percent whole body functional impairment ratings are more accurate than Dr. Murati's 20 percent whole body functional impairment rating. Consequently, the Board concludes Ms. Lopez has sustained work-related injuries to her low back and both shoulders, which comprise a four percent whole body functional impairment.

The Board adopts the findings and conclusions set forth in the Decision that are not inconsistent with the above.

### **AWARD**

**WHEREFORE**, the Board affirms the June 10, 2002 Decision entered by Judge Fuller.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
D. Shane Bangerter, Attorney for Respondent  
Pamela J. Fuller, Administrative Law Judge  
Director, Division of Workers Compensation